

## PUBLIC EMPLOYMENT RELATIONS BOARD



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February 22, 2018

Re: Public Employment Relations Board Case Processing Efficiency Initiative Report

Dear Board Members, External Stakeholders, Staff and Other Interested Parties:

I am pleased to submit for your review and further consideration the Public Employment Relations Board (PERB) Case Processing Efficiency Initiative Report. This report represents the culmination of many hours of work spearheaded by our retained consultants at Mission Consulting. However, the quality of the recommendations set forth in this report could not have been achieved without the intense interest and extensive participation of PERB's external stakeholders and dedicated staff who attended the brainstorming meetings at all three of our regional offices in Sacramento, Oakland and Glendale, California. I want to especially thank all of you for laying the groundwork for these next important steps as this report represents only the beginning of what must occur next.

We now invite all of you to review the recommendations listed in this report and the priority assigned to each of the recommendations and submit further comment on the content of these recommendations and priorities assigned to them during a public comment period at two special Public Meetings which have been authorized by the Board to convene on **March 14, 2018 at 10:00 a.m.** at the **PERB Headquarters Office, 1031 18th Street, Room 103, Sacramento, California,** and on **March 15, 2018 at 10:00 a.m.** at the **California Department of Tax and Fee Administration, 505 North Brand Boulevard, Suite 700 (Room 705), Glendale, California.**

However, I strongly recommend that anyone interested submit written comments by **March 9, 2018**, so those comments can be made part of a public record and reviewed by the Board in advance of the March 14 and 15, 2018 special Public Meetings. Written comments should be addressed to Regina Keith, Administrative Assistant to the Board, Public Employment Relations Board, 1031 18th Street, Sacramento, California, 95811. You can also e-mail the written comments to [RKeith@perb.ca.gov](mailto:RKeith@perb.ca.gov).

We look forward to your written comments and public comments at the March 14 and 15, 2018 special Public Meetings.

A handwritten signature in blue ink, which appears to read "Mark C. Gregersen". The signature is fluid and cursive, written over a light blue horizontal line.

Mark C. Gregersen  
Board Chair

# PUBLIC EMPLOYMENT RELATIONS BOARD

## CASE PROCESSING EFFICIENCY INITIATIVE

### BACKGROUND

Over its existence, the Public Employment Relations Board (PERB) has acquired numerous jurisdictions adding over two million public sector employees and their associated caseloads. However, commensurate staff resources have not kept pace with the growth of the caseload. As a result, PERB continues to be challenged with a case processing backlog. While the backlog in processing cases has usually been looked at from a lack of resources standpoint, addressing this issue with strategic improvements to case processing has been attempted in the past, yet this process is intended to be more systematic and inclusive of all staff and external stakeholders. On April 13, 2017, the Board approved a Case Processing Efficiency Initiative to generate ideas for improvement and streamlining of case processing. This initiative was established to enhance, not supplant, PERB's ongoing need for necessary resources to effectively fulfill its statutory and regulatory mission.

The Initiative was designed to include equal input from PERB staff and external stakeholders in all three regions (Northern, Bay Area, and Southern California) to establish a more comprehensive and systematic look at all aspects of case processing. The external stakeholders have subject matter expertise and their feedback was invaluable to the process and success of the initiative.

Due to the complex undertaking of involving multiple stakeholders and locations, the Board agreed to hire consultants with the design of the approach and ultimately present the findings back to the Board at a public hearing.

The Initiative was designed to include equal input from PERB staff and constituents in all three regions.

## APPROACH

Process interview workshops were conducted to elicit feedback from employees and constituents on what changes could be made to improve overall case processing time. Erring on the side of inclusion, all ideas were captured in the group interviews and subsequently reviewed with a group of PERB subject matter experts (SMEs) to establish priorities. The PERB SMEs consisted of the Administrative Committee (heads of each of the four PERB Divisions: Office of the General Counsel, Division of Administrative Law, Representation Section, State Mediation & Conciliation Service, and Division of Administration) and key staff representatives.

Invitation messages were delivered to employees and external stakeholders to introduce the project and encourage stakeholder participation. An additional feedback mechanism was established for individuals who either could not attend the meetings, wanted to submit feedback anonymously, or simply remembered additional improvements after leaving the interview workshops. This e-mail address bypassed PERB Board and Management and was submitted directly to the consultants to be included in this report.

Two group interviews were conducted at each of PERB's three locations (Sacramento, Glendale and Oakland). One group consisted of internal stakeholders (PERB staff) and one group consisted of external stakeholders (PERB Advisory Committee and constituents). PERB executive management was interviewed separately to maintain an atmosphere of

uninhibited staff feedback provided to the facilitators.

The first group interviews occurred at PERB's Sacramento location, which also served as a pilot to obtain any lessons learned regarding the proposed approach (e.g., number of participants, facility needs, length of time required, groupings of staff and constituents). The Sacramento group interviews occurred over two days, with one day dedicated to internal employees and the other day dedicated to external stakeholders. After the pilot, group interviews were conducted at PERB's other offices in Glendale and Oakland.

Following the group interview process, all of the suggestions for improvement were reviewed by a narrowed group of PERB SMEs to assign each of the improvements a priority as seen in the report section Recommendations and Priorities.

For the purposes of the group interviews and the findings of this report, PERB case processes are identified as follows:

- i Unfair Practice Charge Processing
- i Dispute Resolutions and Settlements
- i Administrative Adjudication
- i Board Decisions/Exceptions
- i Appeal and Litigation
- i Representation Activity
- i Mediation/Factfinding/Arbitration
- i Administration

## RECOMMENDATIONS AND PRIORITIES

The following tables identify the improvement suggestions gathered through the facilitated group interviews as discussed in the Approach section.

Each process area has a dedicated table. Further, the recommendations are organized by priority, High (H), Medium (M), and Low (L). The last column in each table denotes further consideration as follows: (1) \* = already in progress, (2) C = the proposal involves some cost, and (3) AR = authorization required outside of PERB. These notations have not undergone extensive analysis and serve as a general guideline when considering the recommendation.

Finally, in summarizing the recommendations submitted by the stakeholders and PERB employees, every effort was made to retain their original character and tone.

| 1.0 Unfair Practice Charge Processing |   |       |
|---------------------------------------|---|-------|
| High                                  |   |       |
| H.1.1                                 | Empower board agents in the General Counsel's office to engage parties informally: allow board agents to informally discuss issues rather than be restricted to formal communications. Board agents would set timelines for communications in order to enable quick fixes and resolutions of questions.   | *     |
| H.1.2                                 | Expedite a "vexatious litigants" process: establish a process for vexatious litigants (those who file the same charge more than three times) by putting a limit on the amount of amendments a litigant can file or impose attorney fees to dissuade repeated unfair practice charge filers.   | C, AR |
| H.1.3                                 | Change regulations to make electronic filing mandatory and allow e-signature: exceptions should also be set forth for such a regulation.  | C, AR |
| H.1.4                                 | Utilize more non-attorney staff in areas that do not require attorney skills: have non-legal case management staff guide pro pers and take calls from the public. This is very time consuming and most constituent questions do not need to be answered by an attorney. If there isn't a possibility of dedicating non-legal staff for this assignment, an "officer of the day" could be assigned that handles constituent calls which rotate among the attorneys. Additionally, mediation staff in the mediation unit could handle elections because they have similar experience. | C, AR |
| H.1.5                                 | Reinstitute the labor relations analyst/specialist classifications: utilize these non-legal classifications to assist constituents, without burdening the attorneys/mediators.  | C, AR |

## 1.0 Unfair Practice Charge Processing

|       |   |       |
|-------|---|-------|
| H.1.6 | Simplify the unfair practice charge form: create different forms based upon the nature of the charge or enable the parties to better describe the charge. Place other controls over what charging parties can provide, i.e., use a simple form for case initiation, and then have the charge investigator meet with the pro per charging party to direct the pro per as to what documentation is needed.  | *     |
| H.1.7 | Implement page restrictions on the unfair practice charge and supporting documentation: reducing the number of long charges which have to be carefully analyzed by regional attorneys. Currently, each allegation must be addressed either by including it in a complaint, or by explaining to the party through the issuance of Warning Letters and Dismissals stating why the allegations fail to state a prima facie case. Most violations would not require more than 15 pages to set forth sufficient facts to establish a prima facie case, excluding exhibits.   | C, AR |
| H.1.8 | Provide additional training and information to guide pro per charging parties: update literature and materials to provide guidance and provide training workshops and training videos on the unfair practice charge process (this is currently already done for attorneys for MCLE credits). This training would be specifically targeted for pro per charging parties.   | C     |
| H.1.9 | <p>Setup an expedited process for charges based on the level of complexity of the charge: revise expedited processing regulation. The current regulation is vaguely written and allows only PERB to determine if a charge is eligible for expedited treatment. Consider adding detail both in the regulation and on the unfair practice charge form to select categories. Examples:</p> <ul style="list-style-type: none"> <li>i Anything arising in a new organizing context (first time unionization)</li> <li>i Retaliation against union activities</li> <li>i Strikes</li> <li>i Novel issues which have not been addressed by the Board</li> <li>i Backpay or economic liability</li> <li>i Bad faith bargaining on important issues (wage, health, etc.)</li> <li>i Joint employer cases</li> <li>i A school year is ending and the issue would become moot during the summer.</li> </ul> <p>Refusal to furnish information (if not done soon in the bargaining process, renders the remedy moot).</p> | C, AR |

## 1.0 Unfair Practice Charge Processing

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|--------|---|-------|
| H.1.10 | Review similar organizations, such as the National Labor Relations Board (NLRB), State Personnel Board (SPB), and the Agricultural Labor Relations Board (ALRB) for best practices in overall case processing: review and compare with other agency's processes and best practices, although different, would be a good overall approach.                                   | C     |
| H.1.11 | Restrict unalleged violations from coming up later in the process: make parties adhere to the allegations of the complaint issued. The parties come to an agreement on the statement of issue. Many times not every aspect of the case is addressed by the issuance of a dismissal letter or a complaint. Such practices leave the parties in limbo regarding some charges. |       |
| H.1.12 | Revisit website (including the State Mediation and Conciliation Service (SMCS)) and redesign in conjunction with the new Case Management System: seek out the best practices of similar organizations to make the website easy to navigate and to obtain information.   | C, *  |
| H.1.13 | Improve PERB website to clearly guide pro pers - create training embedded training videos on the website to assist pro pers.  | C     |
| H.1.15 | Add a triage process, which assigns charges to regional attorneys, by the new Case Management System in Summer 2018: create an online portal which allows for categorization of their charge (discrimination, etc.).  | *     |
| H.1.16 | Use the recommendations from this case processing efficiency initiative to develop the new Case Management System.  | *     |
| H.1.17 | Implement an electronic document management system: allow regional attorneys to access electronic documentation, similar to ProLaw. Currently, hard copies are still maintained and technology is not being fully utilized.   | C, AR |
| Medium |   |       |
| M.1.1  | Give General Counsel the authority to issue Advice Memos to guide parties, like the NLRB does: review the NLRB's regulations to determine the authority that the General Counsel would need to implement. PERB does not have an Advice Division like the NLRB.  | C, AR |
| M.1.2  | Set a brighter line for the response time to requests for information: adopt a regulation setting forth that documents are to be provided in "x" number of days before a second request for information is made. This would provide certainty and reduce related litigation.  | C, AR |

## 1.0 Unfair Practice Charge Processing

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|-------|--|---|
| M.1.3 | Add to the unfair practice charge form, "will you go to mediation?" (early informal settlement conference): give parties the opportunity to mediate their disputes at the earliest stage possible.   |   |
| M.1.4 | Clarify complaint naming convention for respondents with multiple entities: identify the individually specified department, institution, or campus of respondent named in the charge, as well as the type of claim (ex. retaliation). Currently, the name of the respondent agency is named without such individualized specification. ("Trustees of the California State University," instead of "Trustees of the California State University (Cal Poly Pomona)").  | * |
| M.1.5 | Set up an unfair practice charge team and assign attorneys to work on it on a rotational basis as done in law firms: create a triage system for allocating unfair practice charges to regional attorneys. Charges are currently assigned on a rotation, not based on complexity or importance, which leads to workload distribution issues. Consider triage assignment based upon: complexity, source of charge, history, importance, parties, themes among employers, consolidation of similar issues. Often an individual charge will contain multiple claims. As such, the task of performing the initial review of a charge (and, actually, rendering a decision at the Administrative Law Judge (ALJ) and Board levels) can vary widely depending on the number of claims contained within it. PERB's usual practice is to divide work and assess workload according to the raw number of charges filed. That sort of analysis blurs over the fact that an individual charge can in scope be equal in scope to multiple ones. |   |
| M.1.6 | Address backlog of charges in a targeted approach by creating a task force or committee to focus on reducing the backlog of charges. For example: three regional attorneys on rotation focus on processing charges three days a month and consider setting a quota of 10 charges investigated per task force meeting – resulting in 120 charges processed per year. Select a senior regional attorney to review these.<br><br>Prioritized work (litigation, election, etc.) currently interferes with regional attorneys' ability to process unfair practice charges. Litigation and election work takes precedence over charges. However, attorneys enjoy the mixture and exposure to different assignments. To control the backlog build up, at the end of fiscal year or every six months, revisit the oldest charges and redistribute them in the same task force manner to close them.  | C |



## 1.0 Unfair Practice Charge Processing

Low

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| L.1.1 | Increase the number of remedies to force cooperation and compliance. There is a lack of remedies to force cooperation and compliance. Examples could include: attorney's fees, having PERB communicate directly to unit employees the notice/posting, or require employer to do so more effectively. Look to the ALRB and NLRB for ideas.  |       |
| L.1.2 | Review the manner in which the Board uses Warning Letters (WL). The Warning Letters can be too lengthy. Non-precedential Board decisions may need less time to create than a WL that is adopted as precedential. More guidance on WL detail would be helpful and could save time. Currently, WLs are longer than necessary, because a regional attorney believes that a WL should be written to Board's standards. The Board needs to clearly identify what standards are required for a WL.   | C     |
| L.1.3 | Create a division of the agency to assist those that are indigent: including having a board agent advocate on an indigent's behalf, and review the indigents' filing in their presence. This is likely to require a change in regulation and statute. One model of pro per assistance is family court, where assistance is provided, but the person is not their attorney. This may be a helpful in-between step. This could be done with a regulatory change.   | C, AR |
| L.1.4 | Provide more guidance and training for PERB attorneys.   | C     |
| L.1.5 | Develop checklists for more standardized processes among attorneys. Each office writes their own headnotes to summarize decisions – quality of which varies widely and information should be improved. Consider the creation of desk manuals or guides to help new staff or temps and clarify process.   | C     |
| L.1.6 | Streamline the process for rewriting a charge into a complaint: have the parties submit a draft of the complaint to speed up the process for the board agent's review. Add a complaint form for the charging party to submit a "proposed complaint." (This would require a change in regulation.)  | AR    |
| L.1.7 | Review practices regarding "sufficient facts" alleged so that they are clearly and concisely stated. In some instances, an allegation from the charge is not addressed in the complaint or a dismissal letter and therefore it may still be raised later in the process. This may lead to confusion at the informal settlement conference and subsequent disputes. A "clear and concise statement of facts" needs to be a standard that is enforced (this standard already exists, but regulations may be amended to further define "clear and concise statement of facts"). |       |



## 1.0 Unfair Practice Charge Processing

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| L.1.8  | Set forth in the introductory letter expectations of the board agent to better inform parties of the applicable standard surrounding the investigation:   |          |
| L.1.9  | Regulatory rules could be instituted to help facilitate charge process: including, requiring parties to two-hole punch charges and documents and other aspects regarding requirements for format.   | C, AR    |
| L.1.10 | Develop a better structured warning letter that is more helpful to the pro per, less legal, and more specific (like a list of what to provide). There are only five types of claims that a pro per can bring, so PERB should be able to provide guidance for each of those type of claims. PERB should contact the charging party before they create the warning letter, when it strikes the board agent as an opportunity to amend quickly or it is fatal and can be withdrawn prior to the warning letter being written. Example: With the NLRB, the board agent reaches out in an informal way first to resolve issues at the lowest level. Parties then ask for more time to respond to the warning letter. | *, C, AR |
| L.1.11 | Have all charges filed at the Sacramento Headquarters Office and have a clerk distribute the charges to the regional offices.   |          |
| L.1.12 | Create a written acknowledgement for the charging parties that they are restricted from addressing items not set forth in the written complaint.  |          |
| L.1.13 | Scan charge documents into searchable PDF so the board agent can cut and paste language into the Agenda Memo. Allow for charge that is under five pages long and well-written to be used in place of rewriting the facts and limit the Agenda Memo to analyzing the strengths/weaknesses of the charge. Cut and paste all the facts and perform the analysis (not allow for the rewriting of the case into Agenda Memo). Create regulations (currently there are none) and General Counsel guidelines for Agenda Memos.   | *        |
| L.1.14 | Consider allowing the ALJs to have access to the Agenda Memos: trust ALJs to filter the information accordingly.  |          |
| L.1.15 | Improve process for calculating time elapsed for cases/abeyance. Some of the delays experienced are due to a party asking for time to work with other party on settlement. Parties approaching settlement ask staff not to take action. This delays the processing of those cases. Implement clear mechanisms to “stop the clock” on some of those cases, so it doesn’t skew processing times. At the appeals level, a final date is not placed for an abeyance and perhaps the General Counsel can copy this model. Keep the parties working toward settlement. Such a mechanism could allow for an extension of time or an end to the abeyance.   | *, C, AR |

## 2.0 Dispute Resolutions and Settlements

### High

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| H.2.1 | Change regulations to enforce appearance, preparation, and settlements for informal settlement conferences.  | C, AR |
| H.2.2 | Provide ongoing training to PERB board agents on mediation techniques and strategies. Mediation staff could be a resource for some of this training. | C, *  |

### Medium

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| M.2.1 | Have ALJs perform informal settlement conferences. The ALJs can provide a formality to the process and tell parties the direction the case is headed. PERB may need to increase the number of ALJs on their staff (SPB has many more ALJs and they also travel), especially if this precludes the settlement ALJ from handling that case. Implement this change as a pilot program to see if there is a change in the settlement rate.   | C     |
| M.2.2 | Have mediators mediate informal settlement conferences. The staff in the Office of the General Counsel and the Office of Administrative Law are attorneys first. SMCS mediators are mediators first in the area of collective bargaining and grievance resolution. Consider having SMCS mediators conduct the informal settlement conferences. Some mediators are also attorneys. Mediation staff could help as both: 1) loaned staff to the General Counsel, and 2) early in the process (if parties are interested in mediation even before a complaint is filed). | C     |
| M.2.3 | Enhance informal settlement conference. Institute a pro per pre-informal settlement conference over the phone to help parties settle even before the informal settlement conference.   | *     |
| M.2.4 | Institute a pre-informal settlement conference brief. SPB has such a process in which statements are submitted 10 days prior to conference so parties must review, prepare, and consider what a settlement could look like.  | C, AR |
| M.2.5 | Ask parties to meet with each other before the informal settlement conference and come to the conference with an informal settlement conference statement.   | C, AR |
| M.2.6 | Create a complaint letter that clearly directs the parties regarding PERB's expectations for informal settlement conference preparation.   |       |
| M.2.7 | Explore how to better communicate that the informal settlement conference option/facilitation is available at every stage of the process.  |       |
| M.2.8 | Establish a mechanism to ensure that both parties have someone in authority to settle present at the informal settlement conference.   | C, AR |

## 2.0 Dispute Resolutions and Settlements

Low

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| L.2.1 | Allow for parties to get together for an abbreviated formal hearing to dispense with those cases quickly. This would be a radical change from the current practice.   | C, AR |
| L.2.2 | Bring in outside volunteer attorneys to act as an informal judge/board agent to assist with settlement. PERB would need to create training, standards, and principles, to use non-employee resources (especially retirees, like judges who would be appointed by Board subcommittee with a \$100 a day stipend). The courts have a similar program. | C, AR |
| L.2.3 | Consider having the informal settlement conference conclude and begin with the formal hearing, if parties are not prepared.   | C, AR |
| L.2.4 | Consider additional criteria to allow bypassing the informal settlement conference stage, if parties know they will not settle.   | C, AR |

## 3.0 Administrative Adjudication

High

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|-------|---|-------|
| H.3.1 | Review regulations for subpoena duces tecum, document production, and deadlines and the manner in which hearings are administered. For example, subpoena duces tecum regulations should be changed to require a production response in advance of hearing (and the resolution of any related issues before the formal hearing). Add additional regulations regarding documentation production in advance of hearings. The process would still allow for objections. Add deadlines for both sides to provide some certainty. Potentially, have PERB set other limits on the amount of documents to be produced (ex. reams of paper). | C, AR |
| H.3.2 | Add a regulation setting forth ramifications for a party's failure to appear.   | C, AR |
| H.3.3 | Require parties to provide a valid e-mail address that infers a legal presumption that the parties have been served when the e-mail has been sent. Many times PERB gets contact information that is invalid (resulting in documents having to be provided in writing and mailed). This adds time and delays.  | C, AR |
| H.3.4 | Add a new regulation setting a timeline in which a party must have a first day of hearing after the complaint has been issued (with "good cause" for exceptions).   | C, AR |
| H.3.5 | Introduce a limited discovery process for complex cases.  | C, AR |
| H.3.6 | Institute filing periods for motions.   | C, AR |

## 3.0 Administrative Adjudication

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| H.3.7  | Setup a Prehearing Disclosure Process. Require the ALJ to call the parties or have a prehearing conference to guide the parties and set expectations for the formal hearing, documentation, etc. Consider a “trial readiness” conference and make it mandatory. For example, if a trial readiness conference is set a month before trial, it could help lead to settlement.  | C, AR |
| H.3.8  | Revise expedited decisions process. Not all complaints are equal, but there are no set guidelines for an expedited process. Include limited issues, one-day hearings, no transcripts, etc. Look at SPB and other courts for guidance as to the type of cases which are placed on an expedited track.   | C, AR |
| H.3.9  | Speed up the decision process. Cases languish at PERB for years (the biggest complaint from the parties). Parties want input from judges to encourage settlement or to create realistic expectations as to the potential of the case. Another idea: can decisions be emailed to the counsel of record upon issuance?   | C, AR |
| H.3.10 | In lieu of briefs, the parties could be ordered to give an oral closing argument.  | C, AR |
| H.3.11 | Indicate to the parties that they may move for a bench decision. This would require a waiver of any option to appeal. The ALJ would not be required to entertain the request if the parties are unprepared to decide, but where the parties are agreeable it would dispense with what could be hundreds of extra hours of work. This option should be communicated at the informal settlement conference and at the conclusion of the hearing. | AR    |
| H.3.12 | Establish the informal settlement conference on the calendaring schedule closer in time to the formal hearing.   | *     |
| H.3.13 | Implement a shared electronic management/knowledge management tool. Create a shared research library to consolidate all of the knowledge of the staff and offices – sharable by topic. This could allow for an easier consolidation of case information involving the same parties.  | *     |
| H.3.14 | Allow access to case documentation via the public website. Public, web-based (possibly app-based) portal to allow people access to their case status and possibly documents. This may reduce the number of status inquiry calls PERB gets and will also improve PERB’s public appearance as a transparent entity serving the public.   | C     |

## 3.0 Administrative Adjudication

### Medium

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| M.3.1 | Review process for travel and implement video conferencing for witness testimony.  | C, AR |
| M.3.2 | The ALJ could issue a tentative decision, either on the record or within a few days after the close of the formal hearing or hold a second informal settlement conference afterward. | C, AR |

### Low

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| L.3.1 | Assign/hire a support staff for ALJs. There is just one person statewide, located in Sacramento. Hole-punching, indexing, scheduling, etc. are now done by judges (a poor use of their time). This could be a shared support resource or part-time, but support staff should be located physically in each office.   | C, AR |
| L.3.2 | Enhance informal settlement conference memo. It would be helpful to know who is representing a party in a meeting without having to look it up in the Case Management System to assist with contacting the parties regarding scheduling.   | *     |
| L.3.3 | <p>Shorten the amount of time it takes ALJs to write a proposed decision. Parties seeking expedited cases must agree to submit to a truncated hearing process that could include any number of time-saving features.</p> <p>For example: parties agree to submit a stipulated hearing record resolving all authenticity issues prior to the hearing; parties agree to waive written briefs and submit oral closing arguments on the record; and the ALJ places a page limit on closing briefs.</p> <p>Adopt procedures allowing the parties to submit to a one-day hearing after which the ALJ issues a statement of decision on the record in lieu of written findings.</p> | C, AR |
| L.3.4 | Implement a software system for transcripts rather than sending recordings to a third party to transcribe. The software "dirty version" would be helpful to ALJs for their quick review and refreshing their recollection of what occurred during the formal hearing, or to resolve disputes during the hearing (ALJs don't have this ability currently).  | C     |
| L.3.5 | Compile records on local rules, as they are the law. Create and use a database of local rules and case law which interpret them.   | C     |

## 4.0 Board Decisions

### High

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| H.4.1 | Create time limits for the issuance of decisions for ALJs and Board. In other courts (Art 6, Sec 19), the deadline is 90 days to issue a pending decision (and the judge won't get paid if they miss the deadline). Possibly create a regulation that if after x number of days from the proposed decision being appealed to the board, the ALJ's proposed decision becomes a final decision of the Board if no action taken. The largest backlog appears to be at the Board level. As the backlog is relieved at the General Counsel and ALJ levels, the backlog is shifted to the Board and sits there. What is the purpose of PERB, if it takes longer than the courts? There seems to be inconsistencies in why some cases take longer and no one knows why.   | C, AR |
| H.4.2 | Limit the written length of Board decisions. Place page limits on Board decisions, exceptions, and briefs with justification for an allowance to exceed the limit. Can the decision be shortened and stay on the issues (not procedural history, party positions, etc.)? Decisions do not need to be re-summarized if it is upholding the ALJ decision. When the Board adds 40 pages to a 70-page ALJ proposed decision, it can be really confusing to Board staff and the parties with respect to understanding what was upheld and what was not.   | C, AR |
| H.4.3 | Have PERB and Board staff collaborate together to develop standards and guidelines for written Board decisions, exceptions, and briefs. Place the standards and guidelines in a regulation to enforce current and future Board member use.   | C, AR |
| H.4.4 | Review the processes around what is deemed precedential v. non-precedential. For example, appeals from dismissal letters do not need to be precedential. Allow PERB to summarily affirm dismissal letters that are non-precedential decisions – this could save time. There is no need for a full blown decision on these issues. Consider a summary disposition in non-precedential cases. Expand the use of non-precedential affirmation/decisions. Just say “the Board agrees with the ALJ's proposed decision.” Could also allow this in precedential instances, if the ALJ decision is complete. The Board's upholding or reversing and remanding a General Counsel's dismissal does not have to be precedential. Consider expanding non-precedential decision to the Board's review of an ALJ's proposed decisions. Reserve the right of appeal on Board cases only to novel areas of law or complex/important issues. | C     |
| H.4.5 | Change the way exceptions are taken up by the Board. The Board should have the option to review; it isn't a right to get a review. The Board can deny such review in a simple one-line document. Right now there is nothing to lose for parties to file exceptions.  | C, AR |

## 4.0 Board Decisions

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| H.4.6  | Review and update statutes and regulations for PERB. Several regulations are out of date and need to be reviewed/revamped. They need to be streamlined to match today's technology. Clean up some of the regulations and the code. For example, there is a Public Utilities Code (PUC) that takes some disputes to SMCS (Mediation) for adjudication – and they are appealable to the Board even though the PUC entities are not under the Board's jurisdiction. This law needs to be fixed and taken out of the regulations. Another example concerns auditing the horse racing board (statutory change). | C, AR    |
| H.4.7  | Reassess the culture and practices of the Board. The Board should be focused on novel and complex issues. Board should not "cherry-pick cases." The culture of the Board impacts the entire organization. Re-evaluate the level of scrutiny and interpretation so that the entire organization does not over-analyze or invite vexatious litigants at the cost of those with real problems.  |          |
| H.4.8  | Create a collaborative team culture at PERB. There are no set team meetings between all of the divisions of PERB employees. There are rare exchanges between all staff and divisions. Give the staff space to talk about what is and is not helpful and important, etc. Institute "all staff" meetings.  | C, *     |
| H.4.9  | Increase the number of Board counsels to support its members. It appears there is minimal number of Board counsel to support Board members, and it is burdensome to those who do provide it. Institute the approach of employing a "bullpen" of attorneys to help Board members write board decisions. Increasing the number of Board counsel as part of a "bullpen" would help focus the Board on deciding complex cases.   | C, AR, * |
| H.4.10 | Fill the Executive Officer position that exists in statute.<br><br>There is a lot of distraction placed upon Board Members regarding administrative issues. The Executive Officer position exists in statute, but is vacant now.   | C        |
| Medium |  |          |
| M.4.1  | Review exceptions detail and documentation process and implementation plan. Impose word limits. Publish examples and clarification guidelines (how to file exceptions). The Board can add delineation to its decision writing process (format for headings).   | C, AR    |



## 4.0 Board Decisions

Low

|       |  |       |
|-------|--|-------|
| L.4.1 | Fill Board vacancies. (Governor controls.)   | AR    |
| L.4.2 | Institute an informal settlement conference after the ALJ's proposed decision, but prior to the Board receiving the case. A proposed decision helps the parties understand their case and may encourage the parties toward settlement.   | C, AR |
| L.4.3 | Increase transparency of the Board process via the website. The Board's docket is online, but it would be helpful to see the case, issues, timeframe, etc. (like an appellate body might). For example, what is the briefing in the case (as well as providing a link to them), etc. | C, *  |

## 5.0 Appeals and Litigation

High

|        |  |       |
|--------|--|-------|
| H.5.1  | Ensure the new Case Management System can accommodate charge number and case number tracking. The current system does not allow for charge number and case number tracking, resulting in multiple reference numbers and confusion. Separating case numbers for litigation would be helpful. The caption for a PERB case is different than a litigation case. | *     |
| Medium |  |       |
| M.5.1  | Clarify and streamline appeal deadline/date received rule. The five-day mail rule applies if a fax is received, but not to an e-mail (seems odd to be different from fax).   | C, AR |
| M.5.2  | Add PERB case number to PERB Decision Bank on PERB's Website. This would make locating the correct decision easier for constituents.   |       |
| M.5.3  | Update Decision Name to include the campus. For all California State University and University of California cases, add the campus to the name of the decision so it is easier to locate the correct decision. Also for Cities and Counties where the case is department specific (similar to the way it is done for the State of California).               |       |

## 5.0 Appeals and Litigation

Low

|       |   |       |
|-------|---|-------|
| L.5.1 | Change regulations or practices to prevent parties from gaming the system by filing requests for Injunctive Relief (IR). Review the IR process.   | C, AR |
| L.5.2 | Create a regulation or rule of court requiring the parties to notify PERB if it is filing in superior court, appellate court, or the supreme court.   | C, AR |
| L.5.3 | Change the statute or rule of court to change the requirement for PERB to file a brief on all appeals.  | C, AR |
| L.5.4 | Review the role of the Appeals Assistant. Provide the Appeals Assistant access to legal advice from the General Counsel – timelines and granting extensions to the parties, etc. This person is the gate keeper for the Board, but does not provide legal advice and lacks the ability to seek legal advice on case law or regulations. |       |
| L.5.5 | Reduce resources spent defending Board decisions in court. Review and address the amount of time spent in appellate work. The General Counsel's policy is to have early interaction with General Counsel staff and Board Counsel so they know what the Board is looking for when it files in appellate court.                           | C, AR |

## 6.0 Representation Activity

Medium

|       |   |       |
|-------|---|-------|
| M.6.1 | Review regulations for representation activity so that it is not handled under the jurisdiction of a local rule. Representation activity should not be handled by local rule. This requirement costs public agencies because they have to engage the services of an attorney to review the application of the rule. The MMBA gives public agencies the statutory right to administer its local rules, but PERB would do a better job. This would increase the number of cases going to PERB. Update the regulations for MMBA regarding jurisdictional issues. Currently, PERB must spend time determining jurisdiction. | C, AR |
| M.6.2 | Use Mediation staff in some representation cases (ex. election work).   | C     |
| M.6.3 | Reinstate Labor Relations classifications for the General Counsel's office and assign representation cases to staff members who specialize/focus on representation matters. This could be a new non-attorney position or an annual rotation among General Counsel staff, one per office.  | C, AR |

## 6.0 Representation Activity

|       |  |       |
|-------|--|-------|
| M.6.4 | Review the process regarding consent election agreement. SMCS is currently restricted to conducting only consent elections. It was helpful to charge for elections and to allow mediation to go out into the field of elections (SMCS and constituents want to see this practice continued).         | C, AR |
| M.6.5 | Enforce current regulatory timelines. PERB must communicate and enforce its timeline and process representation petitions faster. Representation takes too long and is time sensitive. Look to the NLRB for direction on a good process that is fast and efficient.                                  | *     |
| Low   |  |       |
| L.6.1 | Overrule City of Fremont Case. When a party signs an election agreement with state mediation, that party waives the right to block a decertification due to unfair labor practices – this practice is not done by ALRB/NLRB.   |       |
| L.6.2 | Use more "Gap Filling Powers." PERB should more aggressively use its "gap filling powers" (under Siskiyou and Amador) in joint employer issues.  |       |
| L.6.3 | Communicate plan for the outcome of Janus v. AFSCME. What will happen if there isn't enough staff?   | C     |
| L.6.4 | Update form letters to provide a more robust analysis. For example, if the entity follows local rules, consider requiring it to be submitted to PERB electronically. Normalize agreements and standard letters for cases that have been helpful and have improved a consistent approach and process. | C, *  |

## 7.0 Mediation/Fact Finding/Arbitration

### High

|       |   |       |
|-------|---|-------|
| H.7.1 | PERB needs more mediators given the size of the State. Even though the workload is sporadic, there are only eight mediators statewide. They are required to travel around the State.  | C, AR |
| H.7.2 | Replace MATS, the case management system for SMCS mediation, or combine with the new Case Management System for PERB. MATS is an antiquated system with little value or efficiency for those staff who use it. For example, one cannot currently scan through cases and identify where mediators will be, so they can schedule cases more efficiently (example: multiple meetings in different areas, with different staff) resulting in a duplication of effort. Cases are assigned by division chief, through use of a spreadsheet. Additional desirable functionality would be reporting, and a remote access app. | C     |

### Medium

|       |   |       |
|-------|---|-------|
| M.7.1 | Harmonize statutes combining SMCS and PERB. Since being transferred to PERB, the Department of Industrial Relations is still referenced in the statute, and other items may be out of date. Review statute of limitation problems. For example, HEERA has a six-month statute of limitations – even though some issues may be 10 years old – it's not reasonable or enforced. | C, AR |
|-------|---|-------|

### Low

|       |  |       |
|-------|--|-------|
| L.7.1 | Change the statutory processing deadline (currently 30 days) to better align with reality. The process takes longer than the 30-day statutory period to coordinate due to the mediator's and the parties' schedules. The case load ebbs and flows because most of the work is with the school districts (EERA/HEERA) and they don't want to schedule mediations during the summer and holidays.                          | C, AR |
| L.7.2 | Open up factfinding duties to non-mediation and non-legal staff. It is mostly about process as much of the work does not require mediators or attorneys to perform. The statute requires priority over the processing of charges. Some attorneys are doing clerical work to contact parties to initiate factfinding identification (when parties do not agree to one) and communicate by sending letters to the parties. |       |
| L.7.3 | Continue the model that the same mediator addresses the same parties/issues. The fact that the same mediator addresses the same parties/issues is very helpful to the parties and the hope is to continue this model. Mediator and arbitrator processes seem to work well.   | *     |

## 8.0 Administration

### High

|       |  |       |
|-------|--|-------|
| H.8.1 | Provide uniform classification and compensation among administrative support positions, regardless of the regional office in which they are employed. All positions should have the same training/pay/abilities. The Supervising Secretary would have to be on a higher pay scale, but the other positions should be equal. If the proposed Charge Clerk or Calendaring Clerk positions do not justify a 1.0 Full Time Equivalent position, the duties can be added on to another position.  | C, AR |
| H.8.2 | Designate administrative staff in Sacramento to support offices in Glendale and Oakland. Assign a single contact for each office. Assign an equivalent contact person in each office who is familiar with the capabilities and limitations of that office's staff, calendars, etc. Possibly create an office manager position to coordinate the work of the administrative support staff throughout all offices and divisions, but the other positions should be equal. The perception outside of Sacramento is that the administrative office has changed significantly in the past 2-3 years and it is hard for those in satellite offices to understand who should be contacted for various administrative needs. Request improved communication and encourage use of intranet and an information technology helpline or use the new Case Management System/E-court system for contact information, announcements, etc. Bring it up at staff meetings and provide a tour of the intranet. | C, AR |
| H.8.3 | Create and fill an information technology position at PERB. The network has gone down which caused major problems and slowed the process for lengthy periods of time. There needs to be information technology staff at PERB. Need to analyze the management of information technology for PERB.   | C     |
| H.8.4 | Conduct a review of resource allocation, both administrative and legal.  | C     |
| H.8.5 | Take into account the impact of any proposed change taken as a result of this improvement process upon PERB's current staff and budgetary allotment. Additionally, take into consideration the time and costs of improvement recommendations on PERB administrative staff and services.  | C     |
| H.8.6 | Accept credit cards for arbitration payment. Payment is only available by checks and money orders (it takes parties a long time to do this) and requests cannot be processed until payment is made. (Note: the Department of General Services has a master contract for credit card services that PERB could utilize.)   | *     |
| H.8.7 | Implement an Interactive Voice Response (IVR) System: create an IVR system to answer FAQs, route calls to the appropriate board agent, provide constituents basic information to access the website, redirect calls, and refer callers to appropriate organization, etc.   | C, *  |

| 8.0 Administration |  |       |
|--------------------|--|-------|
| H.8.8              | Digitize documents as they come into the office. Additionally, scan permanent representation files that are old and degrading (this should be the #1 priority to scan).  | C     |
| H.8.9              | Implement a scheduling system online for PERB staff and parties similar to other state agency online scheduling systems.   | C     |
| H.8.10             | Assess and improve network capabilities: remedy network issues that cause major problems and slow the process for lengthy periods of time. The system is so slow in some locations that it impacts work and communication with the public.   | C     |
| Medium             |  |       |
| M.8.1              | Analyze the imposition of fees on parties. Consider implementing a Formal Hearing Fee or an Appeal Fee. Even assessing the parties a nominal fee will change the way they think about the process. Cost equates to value and currently, there is no cost associated with filing a charge and pursuing it, even if it is unmeritorious or serves no functional purpose for the charging party. Fairness and how to go about collecting the fees will need to be addressed.                  | C     |
| M.8.2              | Create a new Charge Clerk position assigned to the Sacramento Regional Office. A Charge Clerk would be responsible for all Case Management System functions and file transfers from the point of filing until the closure of assignment or transfer to the Board, and for maintaining proper rotation for new charges and informal settlement conference assignments. Location of documents and case files would be more carefully accounted for, and noted in the Case Management System. | C, AR |
| M.8.3              | Create a Calendaring Clerk for the scheduling of formal hearings and informal settlement conferences. Currently, each ALJ and attorney calendars their own appearances subject to their own schedule and the parties' availability. A calendaring clerk would take this work away from the ALJ/attorney, freeing up their time for other tasks.  | C, AR |
| Low                |  |       |
| L.8.1              | Consider reassigning administrative positions to Glendale and Oakland offices. As it stands, professional and legal staff make copies, juggle calendars, handle office supplies, visitors, and tag surplus equipment all in the middle of litigation deadlines. Judges are also testing server equipment.  | C, AR |

## NEXT STEPS

Recommended case processing efficiencies have been identified by PERB employees and constituents and prioritized by SMEs as discussed in this report. The immediate next step for the Board is to determine whether or not they agree with each of the priorities assigned by the SME group and change where necessary. Once the Board has agreed upon the priorities, the next steps are to tackle the implementation of the recommended case processing efficiencies through a phased approach.

### Phase 1: Quick-Wins

Begin by addressing “quick-wins” which are recommendations that can be implemented easily without the need for large-scale analysis, great cost or effort, and will provide immediate recognizable benefit. Ensure that the new CMS includes system requirements and design that will address relevant recommendations from this report.

### Phase 2: Conduct Further Analysis

Medium-term next steps consist of a much more extensive analysis of each of the recommendations identified. The outcome of the analysis should identify the major impacts of each recommendation, what action steps are necessary to gain approval outside PERB if required, a cost analysis, what and how to use technology to support the business functions of the program, and actionable steps in the form of an implementation plan to improve existing program processes.

### Phase 3: Mature processes and conduct continuous improvement

Lastly, monitor the process as it develops into a mature, stable, and sustainable process and implement continual improvement as a cyclical practice.